

REMARKS

Claims 7-14, 19, and 21-38 are pending in the application and are presented for reconsideration and further examination in view of the foregoing amendments and following remarks. Claims 9, 12-14, and 17 have previously been withdrawn from consideration.

In the outstanding Office Action the pending claims are subject to a species election requirement from the Examiner.

SUMMARY OF RESTRICTION REQUIREMENT

Invention Groups. The Examiner has required restriction of the claims in this application to a single disclosed species under 35 U.S.C. 121.

As the basis for this restriction requirement, the Official Action states the following:

This application contains claims directed to the following patentably distinct species of the claimed invention: The species of Figures 5-7, 8, 9, 10 and 11.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held allowable. Currently, no claims are generic.

PROVISIONAL ELECTION

Applicants provisionally elect the species embodied in

Figure 11, with traverse, for prosecution on the merits at this time. Applicants respectfully submit that amended claims 19, 22, 23 and 31 are generic and/or linking with respect to the various species, and that amended claims 19 and 21-38 read on the elected invention. However, since claims 19, 22, 23 and 31 are generic and/or linking, Applicants submit that claims 7-8 and 10-11 should also be prosecuted on the merits at this time.

TRAVERSAL

Applicants respectfully traverse the Examiner's election/restriction requirement.

First, the election requirement is traversed because the Examiner has not met the burden of providing "an appropriate explanation" as to the existence of a "serious burden" if a restriction were not required. See MPEP 803, 811. In particular, MPEP 811 states:

37 CFR 1.142(a), second sentence states: "[i]f the distinctness and independence of the invention be clear, such requirement will be made before any action upon the merits; however, it may be made at any time before final action in the case at the discretion of the examiner." This means the examiner should make a proper requirement as early as possible in the prosecution, in the first action if possible, otherwise, as soon as the need for a proper requirement develops.

Before making a restriction requirement after the first action on the merits, the examiner will consider whether there will be a serious burden if restriction is not required. (Emphasis added.)

Applicants respectfully submit that the present Office

Action includes **no** indication of a serious burden on the Examiner to search the different species alleged in the Office Action. The Office Action provides a statement that the species are distinct, but does not indicate why it would be a serious burden on the Examiner to search the embodiments in the respective figures.

In fact, Applicants submit that **the Examiner has already searched the listed species and provided an Office Action on the merits therefor**. In particular, the previous Office Action (dated January 2, 2004), provided an action on the merits for previously-presented claims 7-8 and 10-11 (Figures 5-7), claim 19 (Figures 8-9), claim 21 (Figure 10) and claim 22 (Figure 11). **Thus, the Examiner has already performed a search on each of the species indicated in the instant election/restriction requirement**. As such, Applicants respectfully submit that **it would not be a serious burden on the Examiner if restriction were required**. Applicants also respectfully submit that the claims newly submitted in the previously filed response are directed to the same figures as the original claims, i.e., the newly submitted claims are not distinct from the originally filed claims.

Further at the Examiner's disposal are powerful electronic search engines providing the Examiner with the ability to quickly and easily search all of the claims. Again, Applicants reiterate

that the Examiner has already conducted such a search of the subject matter contained in the Figures as expressed in the originally filed claims. Considering that the Examiner has already undertaken a search for the previously presented claims (i.e., those claims that were pending prior to the previously-filed response), additional searching for the claims added in the previous response should not be a burden since the newly submitted claims are directed to the same subject matter.

Moreover, given the overlapping subject matter and classifications of the alleged species, examinations of all the invention groups would not pose a serious burden because they would be coextensive. Further, the fact that various claims may fall under different U.S. Patent and Trademark Office classes does not necessarily make them independent or distinct inventions. The classification system at the U.S. Patent and Trademark Office is based in part upon administrative concerns and is not necessarily indicative of separate inventive subject matter in all cases.

Furthermore, applicants have paid a filing fee for an examination of all the claims in this application. If the Examiner refuses to examine the claims paid for when filing this application and persists in requiring applicants to file divisional applications for each of the groups of claims, the Examiner would essentially be forcing applicants to pay

duplicative fees for the non-elected or withdrawn claims,
inasmuch as the original filing fees for the claims (which would
be later prosecuted in divisional applications) are not
refundable.

In view of the foregoing, applicants respectfully request
the Examiner to reconsider and withdraw the restriction
requirement, and to examine all of the claims pending in this
application.

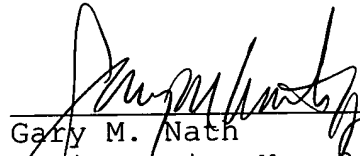
If the Examiner has any questions or comments regarding this
matter, he is welcomed to contact the undersigned attorney at the
below-listed number and address.

Respectfully submitted,

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